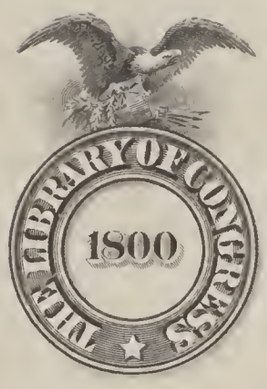
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# REPORT AND RESOLUTION

OF THE

## JOINT SELECT COMMITTEE

OF BOTH HOUSES OF THE

## GENERAL ASSEMBLY OF NORTH CAROLINA,

ON THE PROPOSITION TO ADOPT THE

## CONGRESSIONAL CONSTITUTIONAL AMENDMENT,

PRESENTED BY

JAMES M. LEACH, OF DAVIDSON, CHAIRMAN,

ON THE 6TH OF DECEMBER, AND

**Adopted by both Houses on the 13th December,**

**1866.**



RALEIGH:
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1866.

# REPORT

OF THE

# JOINT SELECT COMMITTEE

ON THE

## PROPOSED AMENDMENT AS THE FOURTEENTH ARTICLE OF THE CONSTITUTION OF THE UNITED STATES.

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The Joint Select Committee on Federal Relations, to which was referred that part of the Governor's Message relating to a communication from the Honorable Wm. H. Seward, Secretary of State for the United States, covering an attested copy of a Joint Resolution of Congress, proposing a fourteenth Article as an Amendment of the Constitution of the United States, to be submitted to this General Assembly for ratification or rejection, have had the same under consideration, and ask leave to report:

The Committee, impressed with the importance of the subjects embraced in the proposed Constitutional Amendment, as affecting the Commonwealth of North Carolina not merely for the present, but, in all human probability, for ages to come, have given the whole matter a careful and respectful consideration, and now offer the reasons for the conclusions at which they have arrived.

A number of radical changes in the fundamental law of the country are proposed to be embraced in one Article, and to be accepted or rejected together, and if but one of these Amendments is disapproved, this General Assembly will be under the necessity of rejecting all; leaving no alternative of accepting some of the Sections in the proposed Article and rejecting others; and it is submitted that this mode of

amending the Constitution of the United States is unwise, and without precedent, and ought not to find favor in any portion of this great nation.

The Committee entertain the opinion that this proposition has not been submitted in a constitutional manner, and in pursuance of the forms prescribed by the Constitution. North Carolina and her ten sister seceding States, have been repeatedly recognized *as States in the Union*, by all the Departments of the Federal Government, both during and since the war. *Congress* did this by the Resolutions of July, 1861, which declared that "the object of the war was not for any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and to preserve the Union with all the dignity, equality and rights of the several States unimpaired." And again: by an Act apportioning taxation among the States; by an Act assigning them their respective numbers of Representatives; by an Act at the last session re-adjusting the Federal Judicial Circuits, by accepting as valid the assent of Virginia to the division of that State, and thereupon establishing the State of West Virginia; and by other Acts. The *Judiciary* has recognized them by hearing and deciding causes carried up from their Courts. The *Executive* has done so by approving the aforesaid Acts of Congress. This recognition of them as States in the Union is *now repeated* by the Federal Government in submitting to them for ratification the pending proposition of Amendment, since only States in the Union can vote on such a question.

The Federal Constitution declares, in substance, that Congress shall consist of a House of Representatives, composed of members apportioned among the respective States in the ratio of their population, and of a Senate, composed of two members from each State. And in the Article which concerns Amendments, it is expressly provided that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." The contemplated Amendment was not proposed to the States by a Congress thus constituted. At the time of its adoption, the eleven seceding States were deprived of rep-

resentation both in the Senate and House, although they all, except the State of Texas, had Senators and Representatives duly elected and claiming their privileges under the Constitution. In consequence of this, these States had no voice on the important question of *proposing the Amendment*. Had they been allowed to give their votes, the proposition would doubtless have failed to command the required two-thirds majority. Had they voluntarily relinquished the exercise ot their right and privilege in this matter, as they had done in the case of the late Amendment respecting slavery, they would, perhaps, be estopped from objecting to the regularity of the proceeding. But as their Senators and Represenatives elect were seeking admission to their seats and were deprived of them against their consent, the subject is presented in a different light.

If the votes of these States are necessary to a valid ratification of the Amendment, they were equally necessary on the question of proposing it to the States; for it would be difficult, in the opinion of the Committee, to show by what process in logic, men of intelligence, could arrive at a different conclusion. And it is submitted that this irregularity, in the initiative step, would make the Amendment of doubtful validity, even if ratified. It would certainly constitute a dangerous precedent, give rise to troublesome questions hereafter, remove the landmarks established by the fathers, and greatly tend to diminish that regard for the sacredness of the Constitution, which all our people ought ever to cherish.

The Committee are of the opinion that the Constitution was not complied with in *another particular*, in the manner of proposing this Amendment. The third clause of section second, article first, provides that "*every* order, resolution, or *vote*, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment,) shall be presented to the President of the United States, *and before the same shall take effect*, it shall be approved by him, or being disapproved by him, shall be *re-passed* by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill." A proposition to amend the Constitution is certainly

included in the terms of that provision, as being a matter requiring the concurrent action of both Houses. The pending Amendment, however, was never presented to the President, for his approval or disapproval, but sent directly to the Department of State, to be transmitted thence to the respective States.

And it is far from a satisfactory answer to this, to say that because the proposition was originally passed by a two-thirds majority, it need not be presented to the President, since his disapproval could not affect it; for his disapproval might affect it when put upon its *re-passage*, after he had returned it with his objection—an occurrence not remarkable in the past history of the government. And this *re-passage* over his *veto* by the two-thirds majority is required before any "order, resolution or vote" of Congress can "*take effect*," even though on its original passage it may have received an unanimous support.

If it should be said that any doubts as to the validity of the proposed Amendment, whether ratified or rejected, under present circumstances, will be obviated by the strong arm of power which will validate it at all hazards, the ready answer is, that if the strong arm can give validity to an amendment adopted in disregard and defiance of *some* of the prescriptions of the organic law, it can, with the same propriety, set them *all* aside. On that supposition, the Constitution would be at the mercy of the strongest, and could at any time be moulded according to the will of a mere majority, however unscrupulous or despotic that majority might be. It would thus become the plaything of politicians and parties—its sanctity profaned and its glory departed.

The Committee do not present these views in any spirit of captiousness, nor as the advocates of mere sectional interests, notwithstanding the amendment proposed is unquestionably designed to operate on the Southern States of this Union; indeed, such are the avowals of its advocates. But the question of its ratification under existing auspices, is of the gravest import to the whole country, and to the cause of free, constitutional government. In the mutations of human affairs, and the conflict of interest and opinion that may arise in the future

history of this great and wide-spread nation, the time may come when changes in the Federal Constitution may be made in derogation of the rights and interests of *other parts of the Union*. In so grave a matter too much precaution cannot be used. The Constitution is the basis of our liberties. No true American has ever ceased to regard it as peculiarly sacred, as well as for its own intrinsic excellence, as for the exalted character of its patriotic founders. And it should never be forgotten that those good and great men, inspired by lofty deeds, in a spirit of forbearance, conciliation and compromise, and in the exercise of an enlightened statesmanship, framed this great bulwark of civil and religious liberty. Even those who are called "rebels," have never spoken lightly of it. The affections of all sincere lovers of liberty twine around it, like ivey around some hallowed shrine where the heart pours forth its profoundest devotions.

Many of the prominent questions of the present time are of temporary interest only, and will soon be forgotten; and with them will pass away the passions and hate which they have engendered. But the Constitution was made for all ages. For peace and for war. All patriots will unite in the hope that its majesty and symmetry may not be marred by the incorporation of Amendments, shaped amid the excitements of these tempestuous days, and made a part of it through methods of proceeding which are hasty and ill-considered, and unwarranted by the provisions of the instrument itself.

Proceeding more in detail, to the merits of the proposed Amendment, the Committee have confined themselves to its most prominent features.

In the first section it is provided that "no State shall make or enforce any law which shall abridge the *privileges or immunities* of citizens of the United States." What those privileges and immunities are, is not defined. Whether reference is had only to such privileges and immunities as may be supposed now to exist, or to all others which the Federal Government may hereafter declare to belong to it, or may choose to grant to citizens, is left in doubt, though the latter construction seems the more natural, and is one which that Gov-

ernment could at any time insist upon as correct and entirely consistent with the language used. With this construction placed upon it, what limit would remain to the power of that Government to interfere in the internal affairs of the States? And what becomes of the right of a State to regulate its domestic concerns in its own way? Whatever restrictions any State might think proper, for the general good, to impose upon any or all of its citizens, upon a declaration by the Federal Government, that such restrctions were an abridgment of the privileges or immunites of the citizens of the Union, such State laws would at once be annulled. For instance; the laws of North Carolina forbids the inter-marriage of white persons and negroes. But if this Amendment be ratified, the Government of the United States could declare that this law, abridged the privileges of citizens, and must not be enforced; and miscegenation would thereupon be legalized in this commonwealth. Grant that such action on the part of the Government would not be probable, still it would be possible; and its bare possibility sufficiently exemplifies the boundlessness of the powers which the Amendment would confer on the Federal Government.

The power to regulate suffrage has always been claimed to belong to the several States, and it is thought by some, that this point is securely guarded by the provisions of the second section of the proposed Amendment; but a slight inspection will reveal the fact that the power of the States to regulate suffrage is by no means *expressly* recognized therein; nor is their right to "deny" or "abridge" the franchise distinctly set forth. The provision touching the matter merely declares that when the right to vote, of any male citizen twenty-one years old is "denied" or "abridged" the basis of representation shall be reduced in any State where that shall occur. It is not said who shall have the power to deny or abridge the right to vote. If the power of a State, over this subject, is recognized at all, it is only by implication, and an implication, too, which is conveyed solely in the language used for fixing a penalty upon the exercise of such power, and without saying whether its exercise may not hereafter be prohibited. No *exclusive* right, nor even a limited right of a State in the

premises is *expressly* admitted, but all is allowed to rest on a doubtful inference. With the right of a State thus left doubtful, suppose the Federal Government, in the exercise of the power already spoken of as conferred by the first section of the Amendment, should think proper to declare that the right to vote is one of the "privileges" and "immunities" of the citizen, what could a State do except to yield the point, and what would prevent universal suffrage from being at once inaugurated? Nothing.

The founders of our polity left the management of municipal affairs, and the protection of the ordinary personal and property interests of the citizens of the States to the States themselves, uncontrolled by the supervision or interference of the Federal authorities; because, they rightly judged that as the welware of the individual citizen was most intimately connected with the welfare of his State, his interest could be most safely trusted to the protection of his State. The dangerous innovation involved in the clause of the Amendment now under review, coupled with the final section, giving Congress "power to enforce all the provisions of this Article by appropriate legislation," consists in the fact that it authorizes the Federal Government to come in, as an intermeddler, between a State, and the citizens of the State, in almost all conceivable cases;—to supervise and interfere with the ordinary administration of justice in the State Courts, and to provide tribunals,—as has to some extent been already done in the Civil Rights Bill,—to which an unsuccessful litigant, or a criminal convicted in the Courts of the State, can make complaint that justice and the equal protection of the laws have been denied him, and however groundless may be his complaint, can obtain a rehearing of his cause. The tendency of all this to break down and bring into contempt the judicial tribunals of the States, and ultimately to transfer the administration of justice both in criminal and civil causes, to Courts of Federal jurisdiction, is *too* manifest to require illustration.

A serious objection to the second Section, if it should be understood as implying the power of a State to regulate the question of suffrage, is, that it imposes a penalty upon any restriction of the franchise, and offers a premium for its ex-

tension: the representation of a State, and its consequent political importance being diminished in the one event, and increased in the other. The manifest design of this provision is, to bring about, by indirect means, the adoption of universal suffrage, irrespective of race or color. And thus a premium is offered for the prostitution of the franchise. Nothing could be more threatening to the stability of our republican institutions. There can scarcely be a doubt that if the question of negro suffrage could be calmly considered purely on its own merits, and aside from the prejudices of the times, all thoughtful and well-informed men, would unite in condemning it as in the highest degree impoltic and unwise.

A leading feature of this second Section is, that, virtually, it makes the basis of representation to consist of the voters only, which is manifestly inconsistent with the theory of our political system. The voters are merely the appointing power, whose function is to select the representative; but his true constituency is the whole population. It is a great fallacy to maintain that an officer represents only those who vote for him. Senators are chosen by the State Legislature, but they represent not the Legislature merely, but all classes of the State population with their varied interests. But it is urged by the advocates of the policy of basing representation on the voters only, that this is necessary in order to give equal weight to a voter in different States, and yet there is neither justice on the one hand, nor any practical importance on the other, in this idea. Say two States have equal population, equal voting strength, and equal representation; and suppose one of them should choose to restrict the franchise so that its quota of Representatives would be selected by half its former number of voters; this, indeed, would be a matter of interest to its own citizens, but of what possible concern could it be to the citizens of the other State? A complaint that the *weight* of voters was not equal, would come with bad grace from a State, which, by extending widely the franchise, had thereby diminished the relative importance of its individual voters. If two States had equal population, but one of them should allow twice as many voters as the

other, then, according to the pending Amendment, one would be entitled to twice as many Representatives as the other. This might be giving equal weight to voters, but would certainly be giving very unequal weight to the respective non-voting populations; so that no consideration is given to the non-voters who must always constitute the great majority of the people, and bear a large share of the public burdens. And while the negroes, who form so large an element in the population of this Commonwealth, cannot wisely exercise the right of suffrage, and should not, therefore, be allowed to do so, yet if there ever was a time when that race should be counted in the basis of representation, it is *now;* for they are thrown as an immense burden on a few States, and will for many years demand the utmost exercise of every moral agency for their advancement in the scale of being.

The third section of the Amendment is designed solely to affect the South. It virtually disfranchises a large portion of the people of North Carolina. It is well know that most of our able-bodied men were Confederate soldiers during some part of the late war; and of those of our people who were not in the army, scarcely an individual, can truthfully say that he rendered "no aid or comfort" to the Southern cause; and all who had ever previously taken an oath to support the Federal Constitution, either as a Member of Congress, or as an officer of the United States, or as a member of a State Legislature, or Executive or Judicial officer of any State, are excluded from, forever hereafter, holding any office, either in the State or Federal Government, unless the disability is removed by a two-thirds vote of both Houses of Congress. And it may be added, in this connexion, that Congress by providing for the removal of disabilities by its action upon a two-thirds vote, infringes the Constitutional right of the President to grant pardons.

Very few, indeed, of the men of this State, of mature years, and capable of filling such positions, have not at some time held one or more of the aforesaid offices, and taken the oath specified. The immediate practical effect, therefore, of the Amendment, if ratified, will be to destroy the whole machinery of our State Government, and reduce all our affairs to com-

plete chaos, by throwing out nearly every public officer, even to Justices of the Peace and Constables; and it would be hardly possible to find enough of men qualified to fill those various offices, and re-organize our State Government.

And besides this, all experience proves that men rising to power on the ruin of their fellows, and expecting success only by the suppression of the popular will, are generally the worst of all the enemies of their own people; and the great mass of the people of this Commonwealth, would, in the opinion of the Committee, prefer to commit themselves, their honor, and their interests to Congress, as now composed, rather than to those, whose only hope of ruling, lies in the disfranchisement and oppression of more loyal and better men.

The impolicy of imposing this general disability upon those who, in any way, took part in the late conflict, is shown also by the indubitable fact that most of them are now as conservative, as loyal, and as well affected towards the General Government as any class of citizens. Those who personally participated in the great trial of arms, are perhaps more thoroughly convinced than any others, of the finality of the decision, and the utter folly of any future appeal to the arbitrament of war; and hence have, with few exceptions, readily acquiesced in the settlement which has been made of the questions in dispute. Many of those who would be disabled from holding office, are among the most prominent and excellent citizens of the State, who always opposed secession; and their services and co-operation would be greatly needed in the important work of restoring her prosperity.

But if this, and other degrading disabilities, must be imposed upon so many of her citizens, how can North Carolina herself, while she retains any sense of honor or self-respect, assist in imposing it? How can those now controlling the destinies of the Union, ask or expect her to do so, and thus set the seal to her own disgrace? How can they expect or even desire that her Representatives either now or hereafter shall assist in the work of her own degradation?

What her people have done, they have done in obedience to her own behests. Must she now punish them for obeying her own commands? If penalties have been incurred, and

punishments must be inflicted, is it magnanimous, is it reasonable, nay, is it honorable to require us to become our own executioners? Must we, as a State, be regarded as unfit for fraternal association with our fellow-citizens of other States, until after we shall have sacrificed our manhood and tarnished our honor? Surely not. North Carolina feels that she is still one of the daughters of the great American family. Wayward and wilful, perhaps, she has been; but honor and virtue still are hers. If her errors have been great, her sufferings have been greater. Like a stricken mother, she now stands leaning in silent grief over the bloody graves of her slain children. The mementos of former glory lie in ruins around her. The majesty of sorrow sits enthroned on her brow. Proud of her sons who have died for her, she cherishes in her heart of hearts, the living children who were ready to die for her; and she loves them with a mother's warm affection. Can she be expected to repudiate them? No! it would be the act of an unnatural mother. She can never consent to it,—*Never!*

It is said, however, that Congress can easily remove the disabilities which this section imposes; but is it likely that Congress will do so? If they can be so readily removed, why impose them at all? And it should not be forgotten that Congress could, through this dispensing power, manage to fill the State offices of every grade, almost entirely according to its own choice and dictation, by relieving from disabilities only such as might serve its purposes; and thus the freedom of elections would be virtually destroyed, and the State governments might become the willing and subservient tools of grasping ambition and usurping tyranny.

All that need be said of the fourth section of the proposed Amendment is, that it is useless. The Federal debt is already sufficiently secured by the honest intention of the people to pay it. And a noticeable fact is, with what cheerfulness the people of this Commonwealth taxed without representation, and depressed and impoverished by the war, pay their Internal Revenue taxes. By seeking to bind the people of the whole country further to the payment of the public debt, by means of a Constitutional provision, the government

betrays a lack of confidence, not perhaps more in the people of the *South* than in those of the *North*. The Confederate debt is equally certain to remain unpaid. Indeed, most of it can never fall due, by the terms on which it was contracted, and the impoverishment of the whole South, and the Acts of repudiation which have already been passed, will doubtless secure the non-payment of the remainder.

The refusal to pay for our slaves emancipated, is doubtless a great injustice, especially to those citizens who did not favor *secession;* but the Committee entertain the opinion that the people have never hoped, seriously, for its reparation.

In the final section, power is given to Congress "to enforce by appropriate legislation, all the provisions of this Article." How wide a door is hereby opened for the interference of Congress, with subjects hitherto regarded beyond its range, it is impossible adequately to conceive, until experience shall have tested the matter. As the Committe have already submitted, one of the most serious evils to be apprehended from this Amendment, consists in the vast addition it makes, in so many ways, to the powers of the General Government. No enlightened patriot, who has studied carefully our system of government, and has realized how much of its excellence lies in the due division of its powers, between the Federal and State authorities, can have failed to witness, with the profoundest alarm, the tendency to centralization and consolidation, which has in late years been developed. The exercise of the mighty energies, and the assumption of new and unusual prerogatives, required to prosecute successfully, the recent war, in the nature of things, gave to the General Govervment an over-shadowing influence and prestige beyond what it had ever before possessed. And this result was increased by the overwhelming defeat of those States which had always stood forth as the peculiar advocates of State Rights. Every one must perceive, therefore, that even without new Constitutional grants of authority, the Federal Government is no longer what it once was, but that it has expanded into a mighty giant, threatening to swallow up the States, and to concentrate all power and dignity in itself. In the interests of liberty, it appears to the Committee, that

this centralizing tendency, instead of being fostered, needs to be checked. The American people ought not, by new grants of power, seem to authorize the continual exercise of extraordinary prerogatives, undreamed of in the purer and happier days of the Republic. The Constitution, as it stands, was good enough for our fathers; if administered in its true spirit it will also be good enough for ourselves and our posterity.

But suppose North Carolina were to accept the Amendment, thus yielding up her honest convictions of duty and of principle, in her most anxious desire for the restoration of her former relations with the General Government, and the admission of her Representatives into Congress, what guarrantee, nay, even what hope is there that such ratification would thus restore her? So far from it, the unmistakable record of the last Congress, as well as all the indications since exhibited, of tone and temper, are, that this humiliation and surrender of right and principle, would not, in the opinion of the Committee, be likely to facilitate restoration, much less effect it.

The Committee having at some length, gone into an analysis of the different sections of the proposed Article of Amendment, ought perhaps in closing, to say a word in regard to the intimations sometimes thrown out, that if the Southern States refuse to ratify the pending Amendment, harder terms and deeper humiliation will be imposed upon them. These are deemed only as the intemperate declarations of heated individual partizans. No responsible Body of our countrymen, has dishonored itself, or us, by making such threats. It would indeed, be mockery to submit a question so grave and important to this Commonwealth, and then place her under duress to compel her to vote in the affirmative. No humiliation could be deeper, no degradation more profound, than that which she would impose upon herself by yielding to intimidation, and ratifying under the influence of base fear, a measure which she disapproved. The Committee are sure, that this Honorable Legislature, will not do an act so inconsistent with its own dignity, and the dignity of the State. A question of such vital concern to the entire Union and to the cause of liberty itself, will surely be calmly and seriously

considered, with the impartiality and wisdom that should characterize the conduct of Statesmen, and with the manly independence of freemen; and it is therefore confidently believed, that the action this Body shall take upon this grave question, will be worthy of the State of North Carolina.

For the reasons submitted in this report, the Committee respectfully recommend the adoption of the following Resolution,—to wit:

*Resolved*, That the General Assembly of the State of North Carolina, do not ratify the Amendment proposed as the fourteenth Article of the Constitution of the United States.

J. M. LEACH, *Chairman.*
HENRY T. CLARKE,
H. M. WAUGH,
JOS. J. DAVIS,
THOS. S. KENAN,
J. P. H. RUSS,
ARCH. McLEAN.
PHILLIP HODNETT,
JNO. M. PERRY,
J. MOREHEAD, JR.,
D. A. COVINGTON,
W. D. JONES.

The undersigned a member of the Joint Select Committee on the "Howard Amendment," dissents from the Report of the Committee, believing it would be to the interest of the State of North Carolina, considering all the circumstances, to ratify the Amendment proposed as the fourteenth Article of the Constitution of the United States.

P. A. WILSON.